

1 INTERIM STUDY PROPOSAL 2019-087

2 State of Arkansas
3 92nd General Assembly
4 Regular Session, 2019

As Engrossed: S2/18/19

A Bill

SENATE BILL 232

5
6 By: Senator K. Hammer

7 Filed with: Senate Committee on Education
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO CREATE THE FREEDOM OF CONTRACT IN HIGHER
11 EDUCATION ACT; AND FOR OTHER PURPOSES.

Subtitle

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15 TO CREATE THE FREEDOM OF CONTRACT IN
16 HIGHER EDUCATION ACT.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code Title 6, Chapter 61, is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 17 – Freedom of Contract in Higher Education Act

24
25 6-61-1701. Title.

26 This subchapter shall be known and may be cited as the "Freedom of
27 Contract in Higher Education Act".

28
29 6-61-1702. Definitions.

30 As used in this subchapter:

31 (1) "Faculty member" means a person who is employed as a member
32 of the academic staff at an institution of higher education;

33 (2) "Institution" means a public school of higher education,
34 including without limitation a college or university;

1 (3) "Tenure" means the right to continuous employment that is
2 awarded by an institution to an eligible member of the faculty, typically
3 after the successful completion of a probationary period; and

4 (4) "Tenure-track" means an appointment of a faculty member by
5 an institution to a position that could reasonably be expected to lead to a
6 tenured position at the institution.

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8 6-61-1703. Scope.

9 (a) This subchapter applies to all institutions in the state.

10 (b) To the extent that a rule adopted by an institution, including
11 without limitation a board of trustee's policy, conflicts with the language
12 or structure of this subchapter, the subchapter controls.

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14 6-61-1704. Nonretroactivity of institution rules and faculty opt-in
15 rights – Tenured faculty.

16 (a) Except as provided in subsection (b) of this section, the state
17 laws and the rules of an institution concerning tenure that are in effect at
18 the time the faculty member's tenure becomes effective govern the faculty
19 member's contractual and employment relationship with the institution for the
20 duration of the relationship between the faculty member and the institution.

21 (b)(1) An institution shall not apply an amendment to a rule
22 concerning tenure to a faculty member whose tenure became effective before
23 the adoption of the amendment to the rule.

24 (2)(A) A faculty member whose tenure becomes effective before
25 the effective date of an amendment to an institution's rule concerning tenure
26 may elect at any time to have his or her contractual and employment
27 relationship with the institution, including his or her tenure rights,
28 governed by the institution's amendment to the rule.

29 (B) To exercise the right granted under subdivision
30 (b)(2)(A) of this section, a faculty member shall provide a written, signed
31 notice to his or her institution in a manner established by the institution.

32 (C) Once a faculty member exercises his or her right under
33 subdivision (b)(2)(A) of this section, the election is nonrevocable as to the
34 amendment for which the election was made.

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1 6-61-1705. Non-retroactivity of institution rules and faculty opt-in
2 rights – Tenure-track faculty.

3 (a) Except as provided in subsection (b) of this section, the state
4 laws and the rules of an institution concerning tenure that are in effect at
5 the time a faculty member receives notice of appointment to a faculty
6 position govern the faculty member’s contractual and employment relationship
7 with the institution for the duration of the relationship between the faculty
8 member and the institution.

9 (b)(1) An institution shall not apply an amendment to a rule
10 concerning tenure to a faculty member who receives his or her notice of
11 appointment to a faculty position before the adoption of the amendment to the
12 rule.

13 (2)(A) A faculty member who receives notice of appointment to a
14 faculty position before the effective date of an amendment to the
15 institution’s rule concerning tenure may elect at any time to have his or her
16 contractual and employment relationship with the institution, including his
17 or her tenure rights, governed by the institution’s amendment to the rule.

18 (B) To exercise the right granted under (b)(2)(A) of this
19 section, a faculty member shall provide a written, signed notice to his or
20 her institution in a manner established by the institution.

21 (C) Once a faculty member exercises his or her right under
22 subdivision (b)(2)(A) of this section, it is non-revocable as to the
23 amendment for which the election was made.

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25 6-61-1706. Application to existing contracts.

26 (a) This subchapter applies in full to all contractual and employment
27 relationships between a faculty member and an institution, including without
28 limitation contractual and employment relationships that began before the
29 effective date of this subchapter.

30 (b) A faculty member may assert his or her rights under this act
31 regardless of when the faculty member:

32 (1) Is granted tenure by the institution; or

33 (2) Receives notice of appointment to a faculty position.

34 (c) A faculty member may assert his or her rights under this
35 subchapter against an institutional rule that concerns tenure, including

1 without limitation an institutional rule that was adopted by the institution
2 before the effective date of this subchapter.

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4 6-61-1707. Penalties.

5 (a) The remedies established by this section are in addition to any
6 other applicable remedies under law or rule of the institution at which the
7 faculty member is employed.

8 (b) A person who negligently violates this subchapter is guilty of a
9 Class A misdemeanor.

10 (c) A person whose rights under this subchapter are violated by an
11 institution or any agent of an institution may bring an action in a court of
12 competent jurisdiction to:

13 (1) Enjoin a violation of this act; and

14 (2) Recover reasonable court costs and attorney's fees.

15 (d) If a court of competent jurisdiction finds that a violation
16 occurred in an action brought under this subchapter, the court shall award
17 the aggrieved party:

18 (1) Injunctive relief for the violation; and

19 (2) Reasonable court costs and attorney's fees.

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21
22 */s/K. Hammer*
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25 Referred requested by the Arkansas Senate

26 Prepared by: TNL/VJF
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